



ILLINOIS EMERGENCY MANAGEMENT AGENCY

Bruce Rauner
Governor

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
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In the Matter of)	
)	
Procedures for Commission)	
Review of State Opt-Out)	PS Docket No. 16-269
Requests from the FirstNet)	
Radio Access Network)	
)	
Implementing Public Safety)	PS Docket No. 12-94
Broadband Provisions of the)	
Middle Class Tax Relief and)	
Job Creation Act of 2012)	
)	
Implementing a Nationwide,)	PS Docket No. 06-229
Broadband, Interoperable)	
Public Safety Network in the)	
700 MHz Band)	
)	WT Docket No. 06-150
)	
Service Rules for the 698-746,)	
747-762 and 777-792 MHz)	
Bands)	

Comments from the Illinois Public Safety Broadband Network Working Group

Operating under the direction of the Illinois Emergency Management Agency, the Illinois Public Safety Broadband Network Working Group (“IL-PSBN” or “Illinois”) appreciates this opportunity to submit comments to the Federal Communications Commission’s Notice of Proposed Rulemaking regarding the states’ option to opt out of FirstNet and build their own radio access network in their states, and the Commission’s role in this process.

These comments are a collaborative response from the IL-PSBN, which is a multi-disciplinary, multi-jurisdictional public safety/service stakeholder group focused on FirstNet in Illinois.

(Please Note: *Quotes from the Notice are in underlined italics.*
Our comments are in “Blue Text”)

General Comments:

Illinois supports the vision of a National Public Safety Broadband Network (NPSBN) as defined in the Middle Class Tax Relief and Job Creation Act of 2012 (the Act). The network must be fully integrated across the U.S., fully interoperable, and usable by any user from any state as they are operating in any other state. This must be accomplished invisibly to the user; that is, there should be no difference in network functionality or user experience no matter who is supplying the radio access network (RAN). A seamless, technically compliant and financially sustainable network is a goal we believe all stakeholders share.

Although we agree with the concepts for the requirements for a state to proceed with an opt-out scenario, we are concerned by the absolute lack of hard information and defined guidance that is required for the states wishing to opt out to start planning, or even evaluating their options. In a nutshell, a state decision on opt-out could very well be predicated on the process and requirements that are yet to be determined by the Commission as well as NTIA/FirstNet. Based on the current lack of information, it is practically impossible for a state to make an informed decision on the matter. We believe that in order to enable states to make a decision on opt-out vs. opt-in, the Commission, as well as NTIA and FirstNet, need to make much more detailed information available as soon as possible, far in advance of the state plans being delivered to the governors of individual states.

Time is short—we are potentially only six to nine months away from state plan delivery—and we urge the Commission to develop and implement their rulemaking posthaste. We hope that the final guidance and instructions are not delivered at the same time as the state plans. With the already short timelines for opt-out, this would make it extremely difficult for a state to properly analyze the complex implications of an opt-out decision.

III. NOTICE OF PROPOSED RULEMAKING

46. Under the Public Safety Spectrum Act, FirstNet must “take all actions necessary to ensure the building, deployment, and operation” of the NPSBN. Pursuant to Section 6202(b), the NPSBN must be based on a “single national network architecture that evolves with technological advancements” that consists of a core network and a radio access network (RAN). FirstNet is tasked with developing a plan to deploy the RAN within each state. The RAN, as defined in Section 6202(b)(2)(A), “consists of all cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum.” The Act gives each state the option to opt out of FirstNet’s RAN deployment within that state and conduct its own RAN deployment. We describe the state opt-out process in further detail below.

A. OPT-Out Procedures

47. Pursuant to Section 6302(e)(2) of the Act, upon completion of FirstNet’s request for proposal (RFP) process for the construction, operation, maintenance, and improvement of the NPSBN, FirstNet must provide the Governor of each state, or the Governor’s designee, with notice of its completion of the RFP process, details of the proposed plan to build out in that state, and the funding level for the state as determined by NTIA. Then, “[n]ot later than 90 days after the date on which the Governor of a State receives notice . . . the Governor shall choose whether to participate in the deployment of the nationwide, interoperable broadband network as proposed by [FirstNet,] or conduct its own deployment of a radio access network in such State.” While the Act is silent on what action, if any, state Governors must take if they opt to participate in the NPSBN, FirstNet’s Final Interpretations/Second Notice concludes that this affirmative choice “may be manifested by a State providing either (1) actual notice in writing to FirstNet within the 90 day decision period or (2) no notice within the 90 day period established pursuant to 47 U.S.C. 1442(e)(3).”
48. In contrast, if a Governor chooses not to participate in the NPSBN, Section 6302(e)(3)(A) of the Act requires the Governor to “notify [FirstNet], the NTIA, and the Commission of such decision.” The Act is silent, however, on exactly when and how this notice must be provided.

The language may be interpreted to imply that the notice must be provided within the 90 day “decision” period. A decision is not final until acted upon, as prior to that point there is no evidence a decision has been reached.

49. With respect to the Commission's role in the opt-out process, we tentatively agree that Congress did not intend to permit states to delay their notification to the Commission beyond the 90 days provided for states to determine whether or not to opt out.

We agree with this interpretation

In order to implement the provisions of the Act relating to the Commission's responsibilities for reviewing state opt-out plans, we therefore propose to codify in our rules a requirement that states electing to opt out of the NPSBN must file a notification with the Commission no later than 90 days after the date they receive electronic notice from FirstNet as provided in Section 6302(e)(2). We also propose to require that the state's opt-out notice to the Commission certify that the state has also notified FirstNet and NTIA of its opt-out decision. We believe that this approach is consistent with the Act and FirstNet's interpretation thereof.

We agree with this interpretation

We also believe that this approach appropriately treats the timeline within which Governors are required to provide notice as coextensive with the timeframe within which Section 6302(e)(2) requires them to decide whether to opt out.

We seek comment on these proposals and on our rationale. We also seek comment on how such notice should be provided to the Commission.

While the rationale seems logical and appropriate, the consequences of a failure to comply should be defined and made available to the states as soon as possible. Notice should be provided by certified mail to an appropriate FCC office.

Should someone other than a state Governor, such as the Governor's designee, be permitted to file the notice?

No. Efforts to this point have included a focus on the involvement and inclusion of the chief executive of each state or territory. Consistency of application and process is imperative in all facets of implementation, including administration.

Should the Commission establish a dedicated email address?

No. Defined and appropriately distributed/disseminated processes should preclude the need for multiple means of formal correspondence.

Should notice be filed in Docket 16-269?

Yes. All states, territories and interested parties should have access to information concerning identification of FirstNet participants and entities which opt out.

Is there other information that should be included in the notice?

In addition, the Commissions should forward all communications and requirements on this matter to FirstNet. FirstNet should then be required to forward all Commission communications and requirements on this matter to all the State Single Points of Contact (SPOC) as soon as possible.

50. Upon providing notice, states that choose to opt out of FirstNet's nationwide RAN deployment have 180 days to "develop and complete requests for proposals for the construction, maintenance, and operation of the radio access network within the State." The Act also states that an opt-out state "shall submit" to the Commission an "alternative plan" for "the construction, maintenance, operation, and improvements" of the RAN within the state, but the Act does not expressly specify any deadline for doing so.

The deadline should be the same 180-day requirement as the Request for Proposals deadline. To not have any deadline at all will cause excessive delays.

We seek comment on what criteria the Commission should use to determine that these requirements have been met.

At a minimum, states/territories that choose to opt out should be required to provide a copy of the posted RFP at the time it is posted and copies of documentation along with name and contact information of the state/territorial project manager and chief project administrator assigned to the state/territorial effort.

51. With respect to the RFP process, we seek comment on what showing should be required for a state to demonstrate that it has "develop[ed] and complete[d]" an RFP within the 180 days required by the Act. In its Final Interpretations, FirstNet states that an RFP may be considered complete once a state "has progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that demonstrates the technical and interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i)."

How far must a state have progressed in the RFP process to meet this standard?

A state must have progressed to the point of a contract award.

If the state has released an RFP but has not received bids or awarded a contract within the 180 days, should its RFP be deemed incomplete?

Yes, however this is an extremely short period of time considering the complexity of the opt-out project. There are many opportunities for delay if the contract hasn't been awarded. For that matter, there are many possible delays after the award in the way of protests and lawsuits.

However RFP completion is defined, we propose that if an opt-out state fails to meet this requirement within the statutory 180 day period, the consequence should be that it forfeits its right to further consideration of its opt-out application by the Commission. This is consistent with FirstNet's interpretation and we believe it is

consistent with the Act's emphasis on speed of deployment of the NPSBN. We seek comment on this proposed approach.

We concur. The described approach is the only viable option for ensuring nationwide standards are achieved within the prescribed time frame.

52. We next turn to the statutory requirement that an opt-out state provide an alternative plan to the Commission. We propose that, if a state notifies the Commission of its intention to opt out of the NPSBN, the electing state will have 180 days from the date it provides such notification to submit its alternative plan to the Commission, i.e., it must submit the plan within the same timeframe applicable to completion of the state RFP. Although the Act did not specify a deadline for submission of state alternative plans, we believe that applying a single deadline to a state's completion of the RFP and submission of its state plan is consistent with the Act and with FirstNet's interpretation that an RFP may be considered complete once a state "has progressed in such a process to the extent necessary to submit an alternative plan." With this proposed approach, we seek to balance the importance of providing states with adequate time to produce thorough and comprehensive alternative plans with the need to facilitate timely Commission review and network implementation. Therefore, we propose to treat a state's failure to submit an alternative plan within the 180-day period as discontinuing that state's opt-out process and forfeiting of its right to further consideration if its opt-out request.

We seek comment on this approach, which we believe best promotes the balanced objectives of the Act.

We concur with this approach. The described approach is the only viable option for ensuring nationwide standards are achieved within the prescribed time frame.

53. We also seek specific comment on what an opt-out state should be required to include in its alternative plan in order for the plan to be considered complete for purposes of the Commission's review. As described in greater detail in section III.C. below, our tentative view is that the plan as filed with the Commission must, at a minimum, (1) address the four general subject areas identified in the Act (construction, maintenance, operation, and improvements of the state RAN), (2) address the two interoperability requirements set forth in Sections 6302(e)(3)(C)(i)(I) and (II) of the Act, and (3) specifically address all of the requirements of the Technical Advisory Board for First Responder Interoperability. We seek comment on this approach. Should there be a standardized organization scheme or format for alternative plans to ease their evaluation?

Yes, there should be a required template for use by all opt-out submitters for consistency in information entry and evaluation.

Should we require plans to include separate sections for each of the four RAN categories (construction, maintenance, operation, and improvements)? We also seek comment on whether we should allow a state to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission's decision.

Yes, the Commission should accept and encourage the submission of amendments and supplemental information and updates from the opt-out states/territories. Modifications can be anticipated in projects of this technical nature and scope. The Commission should have updated and accurate data available, should encourage the submission of status updates and project amendments, and accept new data whenever available. Again, this promotes and assists in ensuring a consistent application of technology and process and ensures interoperability considerations are addressed.

We also seek comment on whether we should allow a state to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission's decision.

In the interest of time, such additional information should ONLY be in response to a Commission request for more information.

Should Commission staff be permitted to discuss or seek clarification of the alternative plan contents with the filer?

Yes, any discrepancies in the submission should be investigated and adjudicated at the earliest possible opportunity to ensure consistency and adherence to FirstNet standards.

If a plan is deemed sufficient for our purposes before a state awards a contract pursuant to its RFP, should we condition approval on substantial compliance with the approved plan under the awarded contract, or should this be addressed by NTIA under its "ongoing" interoperability evaluation?

Yes, the Commission should condition approval. Any discrepancies or potential shortfalls should be identified, investigated and addressed at the earliest possible opportunity.

54. Additionally, we seek comment on who should have access to and the ability to comment on state alternative plans. In this regard, we seek comment on the extent to which state alternative plans may contain confidential, competitive, or sensitive information or information that implicates national security.

Should state plans be treated as confidential, with public notice limited to identifying which states have elected to opt out and filed an alternative plan?

Information of a confidential nature in the state plans should be respected; however, non-confidential contents of state plans should be disclosed. Guidelines for the type and nature of data within state plans that may be omitted from or redacted in the submitted documentation should be developed and disseminated as a portion of the submittal requirements.

Despite the possibility that state plans may include sensitive information, would a public filing requirement be feasible with appropriate safeguards, and if so, should we require such filing, and should the public be given an opportunity to comment on them?

Yes.

If state plans were filed publicly, would our existing rules allowing parties to request confidential treatment for their filings provide adequate protection of sensitive information?

The Commission would need to investigate their own rules to determine if such protections are actually in place. These protections are needed and must be implemented if they are not already in existence.

Alternatively, given the likelihood of sensitive information and the limited scope of the Commission's review of state plans under Section 6302(e)(3)(C)(i) of the Act, should we limit the parties that are entitled to review and comment on such plans?

Yes.

Should we limit comment to specific issues?

Yes. Additionally, how does the Commission intend to address open records laws in some states where they could be interpreted to require the release of any information in their possession? Any confidential information should be segregated from open source information, for example in an appendix to a document, and only released to specific people/organizations.

55. We also seek comment on whether FirstNet should be allowed access and the ability to comment to the Commission on state plans within a defined comment period.

Yes, FirstNet should be allowed access and the ability to comment to the Commission on state plans to ensure the best interests of the entire body of users will be considered and addressed.

Similarly, should NTIA be allowed a defined period to review and comment, particularly in light of its separate statutory role in reviewing state plans that are approved by the Commission?

Yes. All parties directly involved and affected by the resulting infrastructure and operation should have the opportunity to review and comment on the planning, implementation and operation of related components.

Assuming that FirstNet and NTIA are afforded a right to comment on state plans, should states have the right to respond to such comments?

Yes. State planners should be able to respond to comments for the purpose of providing additional information, clarification or explanation of circumstances which relate to the source of the comment.

What rights, if any, should states have to review or comment on alternative plans submitted by other states?

Other states, especially those adjacent or in close proximity to a state submitting an alternative plan, who have a reasonable expectation of regular use and access to the system by first responders or other personnel, should have every opportunity to review and ensure their needs will be addressed by the alternative plan.

What other procedures are appropriate for the Commission's review of such plans?

This process of comments, reviews of comments, and reviews of reviews could stretch on for a considerable amount of time, and time is of the essence here. The Commission should make every effort to streamline and fast-track the process.

How can the Commission most appropriately ensure that it has heard all "evidence pertinent and material to the decision"?

Allow review and comment by as many involved and informed stakeholders as practical.

B. Evaluation Criteria

56. Section 3(C)(ii) of the Act mandates that "upon submission of this plan, the Commission shall approve or disapprove of the plan." There is no deadline in the statute imposed upon the Commission's decision.

The Commission should make every effort to review and provide notice of decision in an expeditious manner.

57. We propose that each alternative plan submitted to us should receive expeditious review. We thus propose to establish a "shot clock" for Commission action on alternative plans to provide a measure of certainty and expedience to the process. We seek comment on what an appropriate shot clock period would be.

As an appropriate level of definition of criteria should already exist, the review of documentation to determine compliance and suitability should not be extremely time-consuming. A shot clock period could be as little as 10 working days and, in an exceptional situation, not more than 15 working days. An absolute maximum with clarifications and extenuating circumstances should not exceed 45 days.

While we anticipate that review of individual state alternative plans could be accomplished reasonably quickly, we must also account for the possibility that the Commission may be required to review and act on multiple state plans submitted to it simultaneously, and that state plans may vary from one another based on the specific circumstances of each state. In light of these factors, would a 90-day shot clock timeframe be appropriate?

A 90-day shot clock would not be appropriate. As previously stated, because a definition already exists, an initial review should not require more than 15 days. The shot clock should be a maximum of 45 days.

Should we consider adjusting the shot clock upwards or downwards based on the number of state alternative plans that are submitted?

Consideration may be given, and a plan for implementation and utilization developed, but the process should only be employed if absolutely necessary. Perhaps high-level adjustment criteria should be published to allow for

transparency. For example, if there are up to five alternate plans, the clock is 45 days. If there are five to 10, the clock is then 60 days, or other similar guidelines.

If we allow FirstNet or others to comment on state alternative plans, should the shot clock be triggered only after the comment period is complete?

No, a process should be developed and employed to allow for concurrent review and processing to occur. All shortfalls, questions, comments, etc. can then be addressed in a single follow-up effort.

Should the Commission publicly announce the commencement of the shot clock period?

Shot clock processes should be defined and made part of the overall procedural instructions. Any start, stop, suspension or other modification to the shot clock should be publicly announced.

Under what, if any, circumstances should the shot clock be suspended?

The shot clock should be suspended for national, regional or state level declared emergencies in which planners and administrators are dealing with immediate unforeseen emergency situations, but not for general situations of “urgency” caused by lack of staffing or planning.

58. The Public Safety Spectrum Act closely circumscribes the review that the Commission is to undertake with respect to States that choose to “opt out” of the nationwide network and to build their own state-wide RAN. Specifically, Section 6302(e)(3)(C)(i) states that states making a timely opt-out decision shall:

...submit an alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the State to the Commission, and such plan shall demonstrate—

- (I) that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203; and*
- (II) interoperability with the nationwide public safety broadband network.*

In this respect, the statute provides a two-pronged standard by which the Commission must evaluate a state’s submission.

59. If the Commission approves a state’s alternative plan, the state must then apply to NTIA to lease spectrum capacity from FirstNet, and it may apply for NTIA grant funding if desired. If the Commission disapproves the plan, “the construction, maintenance, operation, and improvements of the network within the State shall proceed in accordance with the plan proposed by [FirstNet].” FirstNet interprets this statutory language as providing that if a plan “has been disapproved by the FCC, subject only to the additional review described in [the Act], the opportunity for a State to conduct its own RAN deployment . . . will be forfeited and FirstNet shall proceed in accordance with its proposed plan for that State.” We agree with

FirstNet’s interpretation, and given the statutory language we believe that the Commission is barred from entertaining any amended or different alternative plan if it has issued a decision disapproving a state’s alternative plan. We seek comment on this view.

Illinois concurs with this interpretation.

60. We address below our tentative conclusions about how we should approach the two interoperability questions enumerated in Section 6302(e)(3)(C)(i) that the Commission must resolve in its review of state opt-out plans. We tentatively conclude from a review of the Act as a whole that Congress intended the scope of our review to be limited solely to these two factors. We note that within the structure of the Act, the review of opt-out requests by the Commission is only the first step in a multi-step process, and that states whose requests are approved by the Commission must go through additional review by NTIA and FirstNet.
61. Specifically, following an approval by the Commission, states “may” submit an application to NTIA for grant funding to build the state-wide RAN, and “shall” apply to NTIA to lease spectrum capacity from FirstNet. The Act then puts forward detailed standards for review by NTIA in assessing eligibility for grant funding, requiring the state to demonstrate five elements to NTIA:
- 1) that the state has the technical capabilities to operate, and the funding to support, the State radio access network;
 - 2) that the state has the ability to maintain ongoing interoperability with the nationwide public safety broadband network;
 - 3) that the state has the ability to complete the project within specified comparable timelines specific to the State;
 - 4) the cost-effectiveness of the state plan; and
 - 5) comparable security, coverage, and quality of service to that of the nationwide public safety network.
62. We note these statutory provisions because they highlight the clear differentiation in the standards prescribed by the Act for review of state opt-out requests by the Commission and NTIA, respectively. Given this differentiation, we do not believe that Congress intended for the agencies’ reviews to be duplicative. The Act focuses the Commission’s review on “interoperability,” both in terms of adherence to the Board’s recommendations and interoperability with the FirstNet nationwide network. On the other hand, the Act describes the scope of NTIA’s review more broadly as including assessment of the state’s “technical capabilities to operate” and its ability to fund the state RAN. The Act also requires states to demonstrate to NTIA that they have the ability to maintain “ongoing” interoperability with the NPSBN, as well as the “ability” to complete the project. This broader language is not present in the standards for Commission review. Accordingly, we propose that the FCC evaluate state opt-out plans based solely on whether they comply with the requirements for interoperability at the time the plan is submitted, and that its evaluation would not extend to issues that the Act reserves for NTIA’s review, such

as the state's technical capabilities to operate the RAN, funding support, or the state's ability to maintain "ongoing" interoperability with the NPSBN. Thus, the Commission's approval of a state opt-out plan as meeting the interoperability criteria in Section 6302(e)(3)(C) of the Act would not create a presumption that the state plan meets any of the criteria that NTIA is responsible for evaluating under Section 6302(e)(3)(D) of the Act. We seek comment on this view.

(Comments on 60 through 62.)

We generally agree that the Commission should only review what the Act intends for them to review. Any duplication would be a wasted effort in this process.

However, when the Commission is reviewing the interoperability of state opt-out RANs, they should be looking at the state's proposed methods of ensuring long-term interoperability with the overall FirstNet network.

The goal of the public safety community is the ability to seamlessly gain access anywhere their duties may take them. It does not matter to the end-user who serves as the authority for ensuring that they do not lose the ability to access, communicate and inter-operate. It matters only that they (the end user) can do what they need to do, that the responsible authority or authorities understand that they ARE the responsible parties for making it work as it should, and that they (the responsible parties) make it happen routinely, efficiently and safely without finger-pointing and deflection of blame.

63. We note that FirstNet has asserted that "a required aspect of a State's demonstrations of interoperability to both the FCC and NTIA under 47 U.S.C. 1442(e)(3), is a commitment to adhering to FirstNet's network policies implemented under 47 U.S.C. 1426(c)." We tentatively agree that state alternative plans submitted to the Commission should, consistent with the scope of the Commission's review under the Act, include a showing that the state will adhere to those FirstNet network policies that relate to interoperability with respect to the FirstNet nationwide network. Congress vested FirstNet with significant responsibility, authority, and discretion and directed FirstNet to "take all actions necessary to ensure the building, deployment, and operation of the [NPSBN]." In carrying out these duties, Congress specifically charged FirstNet with establishing "network policies," including "the technical and operational requirements of the network." FirstNet has indicated that these network policies are likely to include specifications relating to how the NPSBN will support nationwide interoperability as required by the Act. We therefore believe that states seeking to opt out should be required to demonstrate to the Commission in their alternative plans that their state RANs will adhere to FirstNet's network policies relating to interoperability, to the extent that FirstNet has published such policies at the time that states submit their plans to the Commission. We seek comment on this proposal. In this respect, we note that FirstNet has indicated it "is developing an interoperability compliance matrix that will document the technical standards and network policies that will be needed to ensure interoperability of a State or Territory deployed RAN

with the NPSBN, as required by the Act.’ FirstNet further states that it “plans to finalize the details of the matrix once it has developed a solution with its network partner” and that it “will deliver the interoperability compliance matrix to the FCC, NTIA, and the States and Territories as expeditiously as possible, but no later than the time of delivery of State and Territory Plans.”

We agree with this section in general; however, we must strongly urge the Commission to supply their materials as soon as possible in order for the states and territories to fully understand what criteria they are expected to follow in an opt-out situation. In some cases the requirements imposed by the Commission may play a part in a state’s decision whether or not to opt out.

64. Under Section 6302(e)(3)(C)(i) of the Act, opt-out states are responsible only for construction, maintenance, operation and improvements of the RAN within their states. We therefore propose that the Commission’s evaluation of the opt-out states’ alternative plans be limited to the RAN. In this respect, Section 6202(b)(2)(A) of the Act defines the RAN to consist of “all the cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum.” FirstNet has interpreted this definition to include “standard E-UTRAN elements (e.g., the eNodeB) and including, but not limited to, backhaul to FirstNet designated consolidation points.” We seek comment on how to apply this RAN definition in our analysis and whether there are any elements of the definition that should not be considered as part of the Commission’s interoperability review.

65. We also propose to exclude certain components of the NSPBN from our review because we regard them as not included within the statutory definition of RAN as interpreted by FirstNet. For example, we note that the RAN definition does not include user equipment (UE) or devices and we therefore tentatively conclude that UE-related interoperability considerations are outside of the scope of our opt-out evaluation. We seek comment on this tentative conclusion. Similarly, we tentatively conclude that application-related interoperability considerations are outside of the scope of our opt-out evaluation. Applications usually run between UE and an application server residing in the core. While the corresponding control plane and user plane traffic typically traverses the RAN, this traffic remains transparent to the functions performed in the RAN. Thus, even though applications may play an important role in interoperability, we believe they are beyond the scope of our review because the Act limits the FCC evaluation to the RAN itself. We seek comment on this tentative conclusion.

(Comment on 64 and 65.)

We generally agree with the Commission’s definitions of what they will and will not consider part of the RAN in their review.

All the demarcation points between the FirstNet infrastructure and state's RAN responsibilities must be clearly defined and documented before alternate plans are submitted. In fact, they should be defined before FirstNet releases their state plans.

The concern of the end users will be that all factors impacting their use of the nationwide broadband network have been reviewed and approved by the appropriate authorities. The authoritative entities must ensure that any instances where technical equipment, parts, components or language causes a potential for a gap in the construct and planning are identified and addressed by the most appropriate authority.

C. Content and Review of State Plan Elements

66. As noted above, an opt-out state that has completed its RFP process is required to submit to the Commission its “alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the state.” The Act requires the state’s alternative plan to demonstrate (1) that the state will be in compliance with the minimum technical interoperability requirements developed under section 6203, and (2) interoperability with the nationwide public safety broadband network. The Act requires FirstNet to “ensur[e] nationwide standards for use and access of the network” and establish network policies that include, among other things, “the technical and operational requirements of the network” and does not provide any additional specific factors that the Commission should use to make this interoperability determination.

In this section, we seek comment on those relevant aspects of our proposed review under both the first and second prongs of the statutory test.

67. We believe that Congress defined the test to ensure that state RAN plans would only be approved if they are designed to interact with the FirstNet network in a manner that supports the Act’s overarching goal of providing nationwide interoperability to first responders. In this respect, we believe that state RAN plans should not adversely impact FirstNet’s ability to plan and deploy the NSPBN and establish nationwide network standards and policies. More pointedly, we propose that any alternate plan submitted by a state that would require alteration or changes to the FirstNet network to accommodate the state’s proposed RAN would not meet the interoperability requirement under the Act. We seek comment on this approach.

(Comments on 66 and 67)

We concur that any alternate plan submitted by a state that would require alteration or change to the FirstNet network to accommodate the state’s proposed RAN would not, by definition, meet the existing interoperability requirement of the Act. The burden of proof supporting alteration would be on the state or territory, and implementation of any alteration could occur only after the appropriate authority has been convinced that the alteration

provides the same level of service to all end users in a transparent manner with no equipment modifications, manual intervention, etc. involved.

1. Compliance with the Recommendations of the Interoperability Board

68. Under the first prong of review, the Act requires state alternative plans to demonstrate “compliance” with the minimum technical interoperability requirements contained in the Interoperability Board Report. In light of the specific language of the Act defining the scope of Commission review under this prong, we propose that our review should solely address technical interoperability criteria relating to the RAN as defined in the Interoperability Board’s Report.

69. Specifically, the Interoperability Board Report specified 46 recommended interoperability requirements (“SHALLs”) and an additional set of 55 recommended considerations (“SHOULDs”). Given the Act’s reference to “requirements,” we tentatively conclude that only the 46 recommended requirements from the Board Report are appropriate to consider as a part of the Commission’s evaluation under the first statutory prong. Moreover, since the Act limits state opt-out plans to development of state RANs, we propose to further restrict the Commission’s review of state plans to their compliance with those requirements from among the 46 that are RAN-related. Specifically, we propose that our review under this prong would include requirements (1) - (3), (7) - (10), (20) - (25), (29), (39), (41) - (42) from the Board Report, as documented in Appendix B. We seek comment on this proposal. Does it include all of the relevant RAN-related requirements from the Interoperability Board Report?

Are there any proposed requirements that should be eliminated or additional requirements that should be added?

In our internal review of the Interoperability Report, we noted that almost all the interoperability requirements marked “SHOULD” are solid requirements and should be changed to “SHALL.” Consequently, in our view, the Commission should use ALL interoperability requirements pertaining to RAN buildout in their review of state opt-out alternate plans.

2. Interoperability with the NPSBN

70. Under the second prong of Commission review, the Act requires state alternative plans to demonstrate “interoperability” with the NPSBN. Because this prong of the statute refers to interoperability with FirstNet’s network, we believe it requires a broader showing by the state than the first prong, which refers only to demonstrating compliance with elements of the Interoperability Board Report. At the same time, as in the case of the first prong, we propose to interpret this prong to require a showing solely with respect to the state’s compliance with those RAN-related network requirements specified by FirstNet that are necessary to ensure interoperability with the FirstNet network, and not to extend the scope of the Commission’s review to issues other than such RAN-related interoperability. We also believe that the statute calls for the Commission to independently and impartially evaluate whether alternative plans comply with the interoperability-

related requirements established by FirstNet, but does not empower the Commission to impose network policies or interoperability requirements on FirstNet. We propose to exercise our statutory review role in accordance with this view, and seek comment on our proposed approach.

3. Compliance demonstration (“Showing”)

71. We seek comment on what specific information a state should provide in its alternative plan to demonstrate that it will be interoperable with the FirstNet network in accordance with the two-prong statutory test. Should opt-out states certify compliance with the interoperability-related elements of FirstNet’s network plan and policies?

Should states provide additional documentation regarding specific elements in their alternative plans that could affect interoperability? For example, should states provide vendor information and/or a roadmap detailing the planned life-cycle of the state’s proposed RAN, how the state RAN will provide for backward compatibility, and how equipment hardware/software/firmware will be evolved and phased in and out over time consistent with FirstNet’s interoperability requirements?

Opt-out states should provide whatever data is necessary to show complete interoperability and certify their compliance with the interoperability-related elements of the FirstNet plan and policies.

Should states submit relevant test plans to demonstrate how they intend to meet the interoperability requirements?

Yes.

What standards for and measurements of compliance should we adopt with respect to evaluating each element of the state’s submission?

The standards should reflect the requirements provided to FirstNet as part of their data collection effort, as well as the network parameters that will be in the state plans as provided by FirstNet and their contractor. The net result should be performance equal to or better than that of the overall FirstNet network

72. If the Commission opts to require applicants to certify their compliance, would self-certification by the governor or his/her designee be sufficient? Under such an approach, for example, states could use the following language in their certification: “The state of [xyz] hereby certifies and affirms that its plan to construct, maintain, operate and improve the RAN within its state will comply with all the FirstNet interoperability requirements and that all information and supporting documentations that it has provided to the FCC are true and accurate to the best of its knowledge.” Another approach would be to require a third party, such as an industry association with interoperability expertise, to certify the plans.

Third party certification should be required, and states’ agreements to meet the interoperability requirements should have the same force as a legally binding contract between the state and FirstNet and/or NTIA, whichever is appropriate.

We seek comment on these alternative approaches. What would be the costs and benefits of each approach?

Interoperability is one of the keystones of the FirstNet agenda. Failure to assure interoperability undermines the entire FirstNet effort.

Having a governor of a state certify and sign off on something without any legal backing and enforcement does not provide the level of compliance that would be required.

Certification (and future testing) should be done by an experienced, qualified contractor hired by the government for this function, with the costs paid by the opt-out states.

If we required third-party certification, who would be an appropriate third party?

If the federal government doesn't have personnel qualified to ensure a nationwide public safety standard is being met, there are several national standards bodies and telecommunications testing bodies that could be called upon.

D. Documentation of Commission Decisions

73. Finally, we seek comment on how the Commission should document its decisions to approve or disapprove state opt-out requests under the statutory criteria.

Should it issue a written decision or order explaining the basis for each decision, or would it be sufficient to provide more limited notice of approval or disapproval in each case without a detailed explanation?

The Commission should issue a written decision or order explaining each decision, and the decision should be made public in its entirety (or as much as possible, considering confidentiality issues). Doing so provides planners and administrators with the history, background and impact of certain facts that led to the decision. It provides planners with an idea of the Commission's mindset and may assist in future initiatives.

In this regard, we note that Section 6302(h) of the Act provides for only limited judicial review of the Commission decisions based on a showing that: (1) the decision "was procured by corruption, fraud, or undue means"; (2) there was "actual partiality of corruption"; or there was "misconduct in refusing to hear evidence pertinent and material to the decision or of any other misbehavior by which the rights of any party have been prejudiced."

What level of documentation of the Commission's review process is necessary to support this scope of judicial review or otherwise appropriate?

The Commission's normal level of detail in all their other documentation should be adequate.